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SANITARY LEGISLATION.

COURT DECISIONS.

WISCONSIN SUPREME COURT.

Venereal Disease—Ground for Annulment of Marriage.

C—— v. C——, 148 N. W. Rep., 865. (Oct. 6, 1914.)

One party to a marriage was infected with gonorrhea at the time of the marriage. Upon discovering this fact the other party ceased marital relations. The court held that the facts were sufficient to warrant the annulment of the marriage.

The plaintiff (the wife) sued for divorce. The husband filed a counterclaim, asking that the marriage be annulled.

The court found from the evidence that at the time of the marriage plaintiff knew that she was infected with gonorrhea and that she infected her husband. After his infection the defendant severed marital relations with the plaintiff. The circuit court entered judgment annulling the marriage.

Mr. Justice Winje, in delivering the opinion of the supreme court, said:

"The question arises whether or not the defendant was entitled to an annulment of the marriage upon the facts found. Our statutes (sec. 2351, sub. 4) provide that a marriage may be annulled for 'fraud, force, or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.' The first inquiry arising under the provisions of the statute and the facts is whether the infection of the defendant, as found, constitutes fraud within the meaning of the statute. In *Varney v. Varney* (52 Wis., 120; 8 N. W., 739; 38 Am. Rep., 726) it was held that the concealment by a woman of her previous want of chastity was not such a fraud as would entitle the husband to an annulment of the marriage. That decision is founded upon sound public policy and should not be questioned. But quite a different situation is presented when there is not only a want of chastity but the presence of a loathsome venereal disease that seriously and bodily affects the innocent spouse. In such cases annulment has been granted where there has been no confirmation of the marriage relation after the discovery of the fraud. (*Smith v. Smith*, 171 Mass., 404; 50 N. E., 933; 41 L. R. A., 800; 68 Am. St. Rep., 440. *Svenson v. Svenson*, 178 N. Y., 54; 70 N. E., 120. *Ryder v. Ryder*, 66 Vt., 158; 28 Atl., 1029; 44 Am. St. Rep., 833. *Crane v. Crane*, 62 N. J. Eq., 21; 49 Atl., 734. *Anonymous*, 21 Misc. Rep., 765; 49 N. Y. Supp., 331.) But where there has been a confirmation of the marriage, annulment will be denied. (*Vondal v. Vondal*, 175 Mass., 383; 56 N. E., 586; 78 Am. St. Rep., 502.) Considerations of morality and health alike dictate that neither spouse should be compelled to submit to the indignity and menace presented by such an infection. The fact that, through the fraud and concealment of the guilty party, the other has, without his knowledge and consent, already been infected aggravates rather than palliates the fraud, and can not of itself be considered a confirmation of the marriage. The facts found in this case justified the conclusion of the trial court that plaintiff was guilty of such fraud as, in the absence of confirmation of the marriage, entitled the defendant to an annulment thereof."